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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1301

DELAWARE TRIBAL BUSINESS COMMITTEE, *et al.*,
Appellants,
v.
WANDA JUNE WEEKS, *Appellee.*

On Appeal From the United States District Court for the Western District of Oklahoma

BRIEF OPPOSING MOTION TO DISMISS

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The motion to dismiss does not question the legal propositions advanced in the Jurisdictional Statement. It is based ultimately upon the unsupportable theory that there is no Delaware Tribe of Indians to which a tribal distribution may be made and, since there is no tribe, no members thereof to take per capita distributions as tribal members. This fiction is contrary to the finding of the Indian Claims Commission,[1] that of the Court of Claims,[2] the recitals of Congress in the distribution statutes,[3] the unanimous finding of the

[1] *Delaware Tribe of Indians* v. *United States,* 2 Ind.Cl.Comm. 253, 260, 265 (1952); *see id.* 5 Ind.Cl.Comm. at 491-92 (1957).

[2] *Delaware Tribe of Indians* v. *United States,* 128 F.Supp. 391, 398 (Ct.Cl. 1955).

[3] 25 U.S.C. §§ 1291, 1292(c), 1294(b) (Supp. IV, 1974); 25 U.S.C. § 1182 (1970).

District Court that the "Cherokee Delawares" had steadily maintained group identity,[4] and the responsible representations of the Solicitor General in connected case No. 75-1495. The Delaware Tribe of Indians exists. It clearly succeeds to the tribal interests which the fund at issue is intended to compensate.[5]

Moreover, the assertion (Motion, p. 5) that Congress did not provide for distribution to "an Indian tribe" but to individual lineal descendants of persons who were on "two [non-tribal] rolls" warrants no respect: ten percent of the distribution in fact was directed to "the Absentee Delaware Tribe of Western Oklahoma" and to "the Delaware Tribe of Indians" for purposes authorized by the "tribal governing [bodies]." 25 U.S.C. § 1294 (Supp. IV, 1974); Jurisdictional Statement, app. p. 96a. The rolls of tribal members which the motion would have Congress and the Court disregard may not be perfect census rolls of a beleaguered and harried Indian nation but they are, in the judgment of Congress, the best tribal rolls existent. And certainly neither they, nor any tribal roll which might be conceived, contain or would contain the names of the expatriate Kansas so-called Delawares.

The motion meets neither the clear propositions of our Jurisdictional Statement nor those of the Solicitor General in No. 75-1495. It cannot do so. This *is* a case of tribal Indians against citizens solely of the United States who possess some degree of Indian descent. It is that simple. This case, we respectfully suggest, is governed by *Morton* v. *Mancari,* 417 U.S. 535 (1974), and the judgment below well could be reversed on a summary *per curiam* basis on that authority.

[4] Jurisdictional Statement, app. p. 11a and n. 12.

[5] *See* Jurisdictional Statement, p. 8.

We respectfully pray that the judgment below be affirmed insofar as it holds valid the distribution provided in 25 U.S.C. §§ 1181-86 (1970) and the inclusion of the Cherokee Delaware class, the Delaware Tribe of Indians, in the distribution under 25 U.S.C. §§ 1291-97 (Supp. IV, 1974). We further pray that the judgment be reversed insofar as it holds unconstitutional the distribution of Indian Claims Commission judgment funds under 25 U.S.C. §§ 1291-97 (Supp. IV, 1974).

Respectfully submitted,

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